

May 15, 2015

Via Electronic Mail

Ms. Frankie Hampton
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 6740 – Response to Supplement from Fred Karger
against Rick Santorum for President, Nadine Maenza
Treasurer, *et al*

Dear Ms. Hampton:

The undersigned serves as counsel to the Rick Santorum for President Committee (C00496034), the principal authorized campaign committee for Rick Santorum's campaign for the Republican nomination for president in 2012 ("the Committee"). We are in receipt of the supplemental information that the Federal Election Commission ("the Commission") has forwarded, which was filed by Mr. Fred Karger, the Complainant in the above-referenced MUR.

We do not believe that any of the material in Mr. Karger's supplement contains any new facts to which the Committee can or must respond. As usual, Mr. Karger's filings with the Commission are full of gossip, innuendo and (apparently to him), titillating stories about people and events he reads about in books and newspapers. There is, however, in all the pages of Mr. Karger's 'supplement' no factual evidence of any violation of federal law by the Santorum presidential campaign, the Committee or Rick Santorum.

We do, however, note that Mr. Karger has made allegations which are premised upon his misunderstanding and misinterpretation of the Federal Election Campaigns Act, Title 52 United States Code, Subtitle III, Chapter 301, Subchapter I ("the Act") and the regulations promulgated thereunder by the Federal Election Commission governing coordinated public communications, specifically the Commission's regulations at 11 C.F.R. §109.20 *et seq.* ("the Coordination Rules").

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Mr. Karger apparently takes issue with the fact that certain individuals who were involved with making contributions to independent expenditures only committees ("the SuperPACs") were communicating with one another. Under the Coordination Rules, in order for there to be a violation of law, there must be certain factual factors present with respect to a particular public communication in order to meet the definition of a 'coordinated public communication'.

The factors are set forth in 11 C.F.R. §109.21(a), to-wit:

1. There must be a particular public communication specified in the Complaint, which is alleged as well to have been developed so as to meet the standards of the Coordination Rule. In all the pages of Mr. Karger's 'supplement', he does not reference or identify a single public communication which he alleges to have been coordinated illegally with any of the SuperPACs to which he makes reference in his filing. None. That is the first element that *must* be present in order for there to be a violation of the Coordination Rules. The regulations governing coordinated public communications require, as a threshold matter that there must BE a public communication at issue in any alleged violation. See 11 C.F.R. §109.21(a).
2. The public communication must be paid for by a third party, not the Committee. (11 C.F.R. §109.21(b)) There is no communication to which Mr. Karger refers as the basis of his 'supplemental filing'. While Mr. Karger generally references the existence of several SuperPACs operating in Iowa during the time preceding the 2012 Iowa caucuses, there is no communication alleged in Mr. Karger's supplemental filing that is to be examined for purposes of determining if the communication was coordinated. The mere existence of entities that made independent expenditures is insufficient under FEC regulations to constitute any violation. Only public communications identified with specificity and particularity can be examined under the Commission's Coordination Rules.
3. The public communication must meet one of the 'content standards' articulated in the FEC regulations. The communication at issue must meet one of the factors that constitute the content standards for identifying a coordinated public communication (11 C.F.R. §109.21(c)). While Mr. Karger references the fact that there were several SuperPACs involved in the Iowa 2012 GOP caucuses, and those entities made expenditures for communications supporting Rick Santorum's candidacy for president, the mere fact that such expenditures were made does not implicate any of the Respondents in a legal violations.

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4. The public communication must result from one of the factors that constitute the 'conduct standards' of the FEC regulations (11 C.F.R. §109.21(d)). There is absolutely *no* evidence in Mr. Karger's supplemental filing that meets the conduct standard described in the FEC regulations. In fact, the opposite appears to be true: the *only* fact that Mr. Karger references insofar as communications between the Committee and any of the SuperPACs that endorsed Sen. Santorum's candidacy for president in 2012 are instances in which Mr. Foster Friess, a donor to one or more of the independent expenditures only committees, was present at Santorum campaign events AND that Mr. Friess gave advice *to* the Committee regarding his (Mr. Friess's) opinions about how the Committee was conducting the campaign. The conduct standard for coordinated public communications is a *one-way street*: an independent entity, including a campaign supporter who gives contributions to SuperPACs, can give all the advice it wants to give *to* a candidate, his campaign committee and/or the agents of either. The conduct standard in the FEC regulations envision conduct or statements *from* the Committee *to* an independent entity making public communications about the candidate within the requisite time period preceding an election. In other words, a donor to the SuperPACs can talk *to* a candidate or a campaign about what the campaign or the candidate should be doing – but that does not implicate the SuperPACs insofar as its conduct for purposes of making its public communications.

Mr. Karger has utterly failed to include any information in his supplement other than to state that Foster Friess gave advice *to* the Santorum campaign – but he provides not a single fact to the Commission or to Respondents suggesting that the Committee violated the 'conduct standard' --- or that any of the SuperPACs based their public communications on some propriety information provided *to* them from the Committee regarding the needs, activities, plans or projects of the Santorum campaign. 11 C.F.R. §109.21(d).

That is because there were and are no such facts – the endorsement of Rick Santorum's candidacy by entities supportive of that candidacy and their efforts either separately or in concert, do not violate federal law. The mere existence of several SuperPACs working together to support a common goal – and the presence in their midst of a donor to one or more of them – is not a violation of the campaign finance laws.

Mr Karger further fails to address the 'safe harbor' provisions of the FEC regulations governing Coordinated Communications where the interactions between / among candidates and third parties are addressed specifically when a candidate is seeking the endorsement of a third party entity. 11 C.F.R. §109.21(f). Mr. Karger offers no factual evidence or information that in any way demonstrates an improper collaboration, agreement or scheme between the Committee, Rick



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Santorum or the agents of either, that would meet the definition of 'conduct' that would convert an expenditure for independent public communications into an in-kind contribution from any of the SuperPACs to the Committee. Even the gossip which Mr. Karger has submitted as 'supplemental information' doesn't contain facts of superPACs making communications based on non-public, proprietary information from the Committee involving the needs, activities, plans or projects of the Santorum campaign. Mr. Friess's active efforts to get an endorsement from an influential individual, and then contributing to a SuperPAC established by that individual to publicize his endorsement does NOT constitute a violation of any law.

It constitutes an exercise of protected First Amendment rights.

In short, Mr. Karger has offered nothing in the way of factual evidence of any violation of federal law, and actually has offered nothing 'new' in terms of his flimsy 'guilt-by-innuendo' assertions of wrongdoing. This latest gossip sheet that Mr. Karger has submitted is more of the same: more pieces of paper which do not contain the slightest evidence or fact that would warrant further investigation and proceedings in this MUR.

Accordingly, Rick Santorum for President and its treasurer, Nadine Maenza, respectfully move that the MUR be dismissed. Please contact me at (202) 295-4081 if you have additional questions.

Sincerely,

/s/ Cleta Mitchell

Cleta Mitchell, Esq.
Counsel, Rick Santorum for President
Nadine Maenza, Treasurer